

### **Remark**

Applicant respectfully requests reconsideration of this application.

### **35 U.S.C. §103 Rejection**

#### **Fisher et al. in view of Cooper**

The Examiner has rejected claims 1-6 under 35 U.S.C. §103(a) as being unpatentable over Fisher et al. (U.S. Patent No. 5,835,896), in view of Cooper ("Going going gone! Tradition gives way to technology", British Telecom World, March 1990). Applicant respectfully traverses the rejection because the combination is improper and does not teach each and every element of the invention as claimed in claims 1-6.

As understood by the undersigned, Fisher teaches a system that "allows a group of bidders to interactively place bids over a computer or communications network" without a human auctioneer (See Abstract, lines 1-6). The system includes a mechanism that allows bidders to place proxy bids which allow the system to automatically bid on the bidder's behalf up to an amount established by the bidder (col. 9, lines 19-22). Fisher does not teach or suggest allowing the online bidders to compete against bidders in a live auction.

Cooper teaches a method that allows remote users to participate via satellite in a televised auction (see page 1, paragraphs 9-11). Bidders watch the live auction and place bids through a return-link key pad (see page 1, paragraphs 9-10). Cooper

does not teach or suggest allowing bidders in an online environment to bid on items in a live auction.

Applicant respectfully submits that the combination of Fisher and Cooper is improper. Fisher's system of conducting auctions over a computer or communications network without a human auctioneer teaches away from live auctions. Therefore, there is no motivation to combine Fisher with a reference that teaches the use of live auctions.

Additionally, the method used by Cooper is analogous to bids placed by telephone. It allows a remote bidder to place a bid on an item in a televised auction by relaying bids with a touchpad, similar to a telephone caller communicating his or her bid via telephone. While it is true that an online system also provides a communication mechanism, the online system far exceeds the capabilities of a mere communication system. Just as it is not obvious or desirable to replace all satellite communication systems with online communication, it is not obvious to modify the satellite communication of Cooper with the online system of claims 1-6.

Finally, the problem solved by Cooper is of a different nature than that solved by Applicant's invention as claimed in claims 1-6. Cooper solves the problem of allowing remote users to bid in a live auction. Applicant's invention as embodied in claims 1-6 solves the problem of combining what had previously been two independent auction formats: online auctions and live auctions. Unlike a satellite communication system, which only facilitates communication between the remote bidder and the live auction, the online system is capable of supporting its own

features including online auction items, proxy bidding, and pre-auction bidding. The invention recited in claims 1-6 fulfils a long-standing unmet need by combining the power of online auctions and live auctions into an integrated auction format.

Even if it would be obvious to combine Fisher with Cooper, Applicant respectfully submits that the rejection of claims 1-6 is still improper. The combination of Fisher and Cooper does not teach or suggest each and every element of the invention as claimed in claims 1-6. The missing elements will be discussed in detail in the context of the claims below.

### **Claims 1-2**

Claim 1 requires "updating bidding information associated with an online environment to reflect a current bid associated with the item in a live, in-person auction." The Examiner has stated that Fisher does not disclose this element of claim 1. Applicant respectfully disagrees with the Examiner's assertion that this element is an inherent feature of Cooper. There is no bidding information associated with an item in an online or satellite system in Cooper. Instead, Cooper teaches a method whereby the bidding information in the live auction is broadcast to the remote user (see page 1, paragraph 9). Therefore, Cooper only teaches bidding information associated with the live auction that the remote user observes via television.

Additionally, neither Cooper nor Fisher disclose "bidding on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price." The satellite system of

Cooper does not teach or suggest a mechanism that can bid on behalf of the remote user. Instead, the remote user must bid on his or her own behalf via the touchpad. Fisher does not teach or suggest a method that would communicate the online bids to a live auction. Therefore, neither Fisher nor Cooper teach or suggest a method that would place a bid in a live auction on behalf of an online bidder.

For at least these reasons, Applicant respectfully submits that claim 1 is allowable. Dependent claim 2, which incorporates all of the subject matter of claim 1 and includes additional limitations is also believed to be allowable.

### **Claim 3**

Claim 3 is a dependent claim that contains the limitations discussed above in reference to claim 1. Claim 3 also requires “prior to the live, in-person auction, establishing a starting bid for the item by performing a pre-auction bidding process in the online environment for a predetermined amount of time.” Applicant respectfully submits that neither Fisher nor Cooper teaches or suggests this element of claim 3.

Cooper provides a method and system for customers to place an online bid for an online item (col. 7, lines 13-15). After a bid is received, the system updates the catalog page to reflect the current bid (col. 7, lines 15-17. Cooper does not teach or suggest a pre-auction bidding process in an online environment to establish a starting bid. Fisher also does not teach or suggest allowing the remote users to participate in a pre-auction bidding process that will establish the starting bid for the

item in the live auction. Therefore, for at least these reasons, as well as the reasons discussed above in reference to claim 1, Applicant believes that claim 3 is allowable.

#### **Claims 4-6**

Claims 4, 5, and 6 contains limitations similar to those discussed above in reference to claims 1 and 3. Accordingly, claims 4-6 are believed to be allowable for at least the reasons previously discussed.

#### **Conclusion**

Applicants respectfully submit that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicants respectfully request the rejections be withdrawn and the claims as amended be allowed.

#### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

#### **Request for an Extension of Time**

The Applicant respectfully petitions for a one-month extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. 1.136(a). Enclosed is a check in the amount of \$110.00 to cover the necessary fee under 37 C.F.R. 1.17(a). Please charge our Deposit Account No. 02-2666 for any additional charge associated with such an extension.


**Charge our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 07/27/01

  
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